IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8505 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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EXECUTIVE ENGINEER - Petitioner(s)
Versus
ZALA JAYDIPSINHJI MANUSINHJI - Respondent(s)

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Appearance :
MR RC JANI for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/11/2005

ORAL JUDGMENT

1. This petition is directed against the award passed by the Labour Court, Himmatnagar in Reference (LCJ) No.897 of 1996 dated 30th June 2001 whereby the petitioner was directed to reinstate the respondent workman on his original post along with continuity of service. The Labour Court has also awarded 100% back wages.

2. The short facts of the case are that the respondent workman was

working with the petitioner as work-charge watchman since December 1981. In connection with a theft the respondent workman came to be arrested. An explanation was sought from him, but the respondent workman has not replied to the same. Thereafter the services of the respondent workman came to be terminated. Ultimately the respondent workman raised a dispute which was referred to the Labour Court, Himmatnagar, and registered as Reference (LCJ) No.897 of 1996. The Labour Court, aftr hearing the parties, passed the aforesaid award.

3. While admitting this petition this Court recorded that pursuant to the order dated 22nd October 2001, the respondent workman had been reinstated in service. Therefore at this stage it would not be appropriate to disturb the said position after a period of almost four years. Therefore the only question to be decided is with regard to the back wages.

4. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages

should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

5. In the premises aforesaid, the petition is partly allowed. the award of the Labour Court is modified to the effect that the respondent workman is entitled to reinstatement with continuity of service from the date of publication of the award. The award qua back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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